

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2013 FEB 11 PM 1:38

CLERK OF COURT

MARIA GUARDIAN)
Plaintiff.) CIVIL ACTION NO.
v.)
ASSET ACCEPTANCE, LLC)
Defendant.) TRIAL BY JURY DEMANDED
)
)

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COMPLAINT FOR VIOLATIONS OF THE FDCPA AND FCRA

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NATURE OF ACTION

1. This is an action for damages brought by an individual Plaintiff for Defendant's violations of The Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter "FDCPA") and The Fair Credit Reporting Act 15 U.S.C. § 1681 et seq. (hereinafter "FCRA").
2. Plaintiff seeks to recover statutory damages for Defendant's violation of the FDCPA and FCRA.

JURISDICTION

3. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 15 U.S.C. § 1681p.
4. All conditions precedent to the bringing of this action, have been performed.

PARTIES

5. The Plaintiff in this lawsuit is MARIA GUADIAN, a natural person, who resides in the State of Texas, in the County of Tarrant, and City of Fort Worth.

6. The Plaintiff is a consumer as defined by the FDCPA, 15 U.S.C. § 1692a(3) and FCRA, 15 U.S.C. § 1681a(d).
7. The Defendant in this lawsuit is ASSET ACCEPTANCE, LLC (herein after "ASSET") a debt collection company with offices at 28405 Van Dyke Ave., Warren, MI 48093
8. Defendant, ASSET is an entity who at all relevant times was engaged, by use of the mails, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. § 1692a(5).
9. Defendant is a "debt collector" as defined by 15 U.S.C. § 1962a(6).

VENUE

10. Venue is proper before this Court pursuant to 28 U.S.C. § 1331(b), the occurrences which give rise to this action occurred in Tarrant County, Texas and Plaintiff resides in Tarrant County, Texas.
11. Venue is proper in the Northern District of Texas.

FACTUAL ALLEGATIONS

12. Plaintiff individually, hereby sues Defendant ASSET for violations of The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, et seq. and The Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.
13. In September 2012, Plaintiff noticed that Defendant ASSET has placed derogatory and inaccurate information on TransUnion, Experian, and Equifax consumer reports regarding an alleged account they were attempting to collect.

14. September 11, 2012 via United States Postal Service Certified Mail, Plaintiff sent a letter demanding that defendant validate the alleged debt they were attempting to collect or cease and desist from any further collection activity.
15. Defendant received the validation of debt and dispute letter from Plaintiff on September 17, 2012 according to United States Postal Service records.
16. In the letter dated September 24, 2012, Defendant stated "This is an attempt to collect a debt and any information obtained will be used for that purpose."
17. Defendant ASSET did not provide any validation, no signed documentation, contract, agreement, and/or assignment was provided.
18. On October 3, 2012 via USPS Certified Mail, Plaintiff sent a second notice of validation pursuant to 15 U.S.C. § 1681g that the alleged debt is in dispute.
19. On or about October 14, 2012 Plaintiff received a letter from Defendant ASSET dated October 11, 2012.
20. Defendant again stated "This is an attempt to collect a debt and any information obtained will be used for that purpose" in letter dated October 11, 2012.
21. In the letter dated October 11, 2012, Defendant again did not provide any documentation, signed agreement, contract, and/or assignment.
22. Defendant continues to report the erroneous and derogatory information to TransUnion, Experian, and Equifax consumer reports for the month of November 2012 in violation of the FCRA 15 U.S.C. § 1681s-2(a)(1)(B)(i)(ii).
23. The only reason that the Defendant ASSET is communicating the erroneous and derogatory information regarding the alleged account for the month of November 2012 to

TransUnion, Experian, and Equifax consumer reports is in an attempt to collect on alleged account.

24. On November 13, 2012 Plaintiff sent a notice of the violations of The Fair Debt Collection Practices Act and Fair Credit Reporting Act to ASSET by United States Postal Service certified mail #7012 2210 0002 4049 9735 with return receipt. This was in an effort to mitigate damages and reach a settlement for their violations before taking civil action against Defendant ASSET.
25. All violations complained of herein occurred within the statute of limitations of the applicable federal statutes.

COUNT I

**VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
BY DEFENDANT ASSET ACCEPTANCE, LLC**

26. Paragraphs 1 through 25 are re-alleged as though fully set forth herein.
27. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692, et seq.
28. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692e.
29. Defendant's aforementioned conduct violated the FDCPA 15 U.S.C § 1692e(2)(A).
30. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692e(8).
31. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692e(10).
32. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692e(11).
33. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692f, *et seq.*
34. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692f(1).

35. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692g, et seq.

36. Defendant's aforementioned conduct violated the FDCPA, 15 U.S.C. § 1692g(b).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FDCPA and/or admission from the Defendant(s) that they violated the FDCPA;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C § 1692k.
- c) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- e) Awarding such other and further relief as the Court may deem just and proper.

COUNT II

**VIOLATION OF THE FAIR CREDIT REPORTING ACT BY
DEFENDANT ASSET ACCEPTANCE, LLC**

37. Plaintiff realleges and incorporates paragraphs 1 through 36 as though fully set forth herein.

38. Plaintiff is a consumer within the meaning of the FCRA, 15 U.S.C. § 1681a(c).

39. Experian, Transunion, and Equifax are consumer reporting agencies within the meaning of FCRA, 15 U.S.C. § 1681a(f).

40. ASSET is a furnisher of information within the meaning of Fair Credit Reporting Act, 15 U.S.C. 1681s-2.

41. Consumer report is a consumer report within the meaning of the FCRA, 15 U.S.C. §1681a(d).
42. ASSET violated Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) by continuing to the ASSET ACCEPTANCE, LLC. representation within Plaintiff's consumer credit file with Experian, Transunion, and Equifax.
43. ASSET violated Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) by failing to fully and properly investigate the Plaintiff's dispute of the ASSET ACCEPTANCE, LLC representation.
44. ASSET violated Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) by failing to accurately respond to Experian, Transunion, and Equifax.
45. ASSET violated Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) by failing to permanently and lawfully correct its own internal records to prevent the re-reporting of the ASSET ACCEPTANCE, LLC representations to the consumer reporting agency.
46. ASSET conduct, action and inaction was willful, rendering it liable for actual or statutory, and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.
47. The Plaintiff is entitled to recover costs and any attorney's fees from ASSET in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and 15 U.S.C. § 1681o

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FCRA and/or admission from the Defendant(s) that they violated the FCRA;

- b) Awarding Plaintiff statutory damages in the amount of **\$1,000.00 per month per consumer reporting agency** that erroneous and derogatory information was contained in Plaintiff's credit files as a result of Defendant's actions, pursuant to 15 U.S.C § 1681n;
- c) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- e) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: February 11, 2013

Respectfully Submitted,



Marfa Guardian
3057 OLD HICKORY TR
FOREST HILL, TEXAS 76140
(817) 298-0643
guardianmaria@yahoo.com

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MARIA GUARDIAN

DEFENDANTS
ASSET ACCEPTANCE, LLC

NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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(b) County of Residence of First Listed Plaintiff TARRANT
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant MACOMB

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

- | Citizen of This State | PTF | DEF | PTF | DEF | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692, et seq and 15 U.S.C. § 1681 et seq.

VI. CAUSE OF ACTION

Brief description of cause:
Violations of Fair Credit Reporting Act and Fair Debt Collections Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$

UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED: (See instructions):

JUDGE

DOCKET NUMBER

DATE

02/11/2013

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # 18838 AMOUNT \$350

APPLYING IFFP

JUDGE

MAG. JUDGE